

1 not with those --

2 MR. GREENEBAUM: Why are we cross-examining this
3 witness about a clash of pleadings based on an order of Your
4 Honor?

5 JUDGE SIPPEL: That's right. I mean --

6 MR. GREENEBAUM: If you're going to be asking ques-
7 tions --

8 JUDGE SIPPEL: That was a fast, that was a
9 fast-moving situation, as I recall. And I -- the, the thing
10 that I -- concerned me the most is on the eve of trial we were
11 going to have a non-party with the resources of NBC coming in
12 to squash a subpoena. And, you know, with -- there was
13 nothing specified to it to be sure that there was any docu-
14 ments that were going to be there to subpoena at that par-
15 ticular point in time. It was after the conference -- it was
16 at the conference --

17 MS. SCHMELTZER: The whole, the whole subpoena --

18 JUDGE SIPPEL: The subpoena triggered the
19 conference --

20 MS. SCHMELTZER: Right.

21 JUDGE SIPPEL: -- and Mr. Howard acknowledged at the
22 conference that the NBC documents in fact did exist, not at
23 NBC, but that they had copies of NBC documents.

24 MS. SCHMELTZER: And that mooted the need for the
25 subpoena.

1 JUDGE SIPPEL: Well, it did a lot of things, but it
2 mooted -- yes, it did that. It, it did indeed do that. But
3 what I'm -- the thing that's giving me the concern here is, is
4 taking a layperson witness and having her answer questions
5 that are based on arguments in a pleading. This is not a W--
6 this is not the, the WMAR-TV station document. This is an
7 attorney's pleading.

8 MS. SCHMELTZER: Well, ironically, I've just been in
9 another case where that's exactly what was done for days. A
10 layperson witness was taken over what counsel had said in
11 pleadings.

12 JUDGE SIPPEL: Well, maybe if that's the only way
13 that you can get at the information, and it depends on the
14 nature of the -- of, of the pleading and how it was crafted.
15 But this was done very -- this was a very fast-moving
16 situation.

17 MS. SCHMELTZER: Well, Your Honor, I'm just asking
18 whether she saw the pleading. I think that's a legitimate
19 question.

20 JUDGE SIPPEL: All right. You've asked that ques-
21 tion and she's acknowledged that she has seen the pleading,
22 and you covered this at her deposition. But where do we go
23 from there?

24 MS. SCHMELTZER: I wanted to get --

25 JUDGE SIPPEL: I mean, if the pleading is

1 | inaccurate, why does that tie in with this, this witness? I
2 | don't -- I still don't see it.

3 | MS. SCHMELTZER: Well, I'm going to go to the subse-
4 | quent -- to, to the discovery of the documents next.

5 | JUDGE SIPPEL: That -- no. No. That's, that's a
6 | much more meaningful topic for this witness.

7 | MR. HOWARD: Does that mean that there will be no
8 | more questions about this pleading, I would ask?

9 | JUDGE SIPPEL: Well, let me ask you, what do you
10 | intend to do with this pleading now that it's been marked and
11 | she's identified as having seen it and, and you've not --

12 | MS. SCHMELTZER: I think -- I want to ask her when
13 | she saw it and I think it should come into the record.

14 | MR. HOWARD: For, for what purpose?

15 | MR. ZAUNER: For what purpose?

16 | MS. SCHMELTZER: For the purpose of establishing
17 | that on -- as of 12 noon on October 26th the Commission had
18 | been informed that the documents might or might, might not
19 | exist and that it was going to take a long time to find them.

20 | MR. HOWARD: Now, that, that's -- and that's not
21 | relevant, since the question of whether NBC did or did not
22 | have these documents is not an issue in this case.

23 | MR. GREENEBAUM: I mean -- pleading --

24 | MS. SCHMELTZER: Your Honor, the document says
25 | absolutely nothing about whether NBC had the documents.

1 MR. ZAUNER: But that's who you're subpoenaing the
2 documents from.

3 JUDGE SIPPEL: This is just going around and around.
4 I will let you -- you have it marked as an exhibit. She's
5 identified it as having seen it. You can make your proffer
6 and we'll move on. But I'm not going to have the witness
7 answer any questions about this document. It's a, it's a
8 pleading. It's a, it's a -- it's, it's a -- an attorney's
9 work product pleading that's designed to meet a certain re-
10 quirement of the, of the FCC rules. And there's nothing in
11 there that's, under the circumstances as I -- now, I was right
12 there when this was happening -- that would make this appear
13 to be a deliberate attempt to mislead the Commission on any-
14 thing. But that's my rule. And your proffer would be what?
15 What would you say that -- what evidence would you expect to
16 gain from this, from this pleading --

17 MS. SCHMELTZER: This --

18 JUDGE SIPPEL: -- through this witness?

19 MS. SCHMELTZER: This is what Scripps Howard was
20 representing at noon on the 26th of, of October, 1993.

21 MR. HOWARD: Let me make a point, Your Honor,
22 that --

23 JUDGE SIPPEL: That's --

24 MR. HOWARD: -- the witness has been asked a ques-
25 tion about that and said that she did not recall whether she

1 had seen the document at that time, so even that point can't
2 be successfully made through this witness.

3 MR. ZAUNER: But it would seem to me that in any
4 case that this exhibit -- to be received into evidence Ms. --
5 Mrs. Schmeltzer would have that information in the record and
6 there would be no need to examine this witness at all.

7 JUDGE SIPPEL: Well, there, there -- as I say, this
8 witness has not adopted this pleading. The only thing that
9 she says is that she saw it. Whatever -- well, as I said, I'm
10 going to reject it. I mean, I'm not going to receive it into
11 evidence. It's marked for identification. My ruling is that
12 it's rejected, and I don't want to spend any more time with
13 this pleading with -- and this particular witness. I mean,
14 that's my ruling.

15 (Whereupon, the document marked for
16 identification as Four Jacks Exhibit
17 No. 33 was rejected.)

18 JUDGE SIPPEL: Will somebody see if, if Ms. Barr is
19 still outside?

20 MR. HOWARD: Your Honor, before we leave this en-
21 tirely, may I ask that the document that Ms. Schmeltzer showed
22 to Ms. Barr previously that Ms. Barr said she did not know at
23 all, that that just be marked for identification so that it
24 will go --

25 MS. SCHMELTZER: I wasn't planning to mark that for

1 identification.

2 MR. HOWARD: But it's, it's relevant to the, to the
3 matter that Ms. Barr didn't even know what that document was.

4 JUDGE SIPPEL: Which, which document --

5 MS. SCHMELTZER: It's a, it's a --

6 MR. HOWARD: It was the subpoena.

7 MS. SCHMELTZER: It, it was the --

8 MR. HOWARD: It was the subpoena. And Ms. Barr
9 said: I don't -- well --

10 MS. SCHMELTZER: -- the actual subpoena request. I
11 don't have extra copies of it.

12 JUDGE SIPPEL: Well, I'm not going to put the burden
13 on Ms. Schmeltzer. If you want to bring it in on, on redirect
14 or, or even at a later time in the proceeding. But I, I think
15 that it's clear that it was not a document that was -- she
16 never testified as to anything about the substance of that
17 document. She simply said that she hadn't seen it. And I
18 think it's adequately enough described in the record that it's
19 not going to be -- it is somehow or other is not going to
20 creep in to harm Scripps Howard.

21 MR. HOWARD: Thank you, Your Honor.

22 (Whereupon, the witness has re-entered the
23 courtroom.)

24 JUDGE SIPPEL: Let me just tell Ms. Barr now that
25 she's back that out of your presence there was argument heard

1 with respect to your answering further questions on this
2 Opposition pleading. All right? And I have ruled that you're
3 not to be asked any more questions on it and it's not admitted
4 into evidence. So, you can put that to one side and we're
5 going to move on to another subject.

6 WITNESS: Okay.

7 (Off the record. On the record.)

8 BY MS. SCHMELTZER:

9 Q All right. Ms. Barr, now, you said in your testi-
10 mony that on October 26, 1993, Kenneth C. Howard, Jr.,
11 telephoned you. And this is paragraph 11.

12 A Okay.

13 Q And requested that you review your files to confirm
14 that you had not misspoken during your deposition about your
15 correspondence with NBC. Do you see that?

16 A I see it.

17 Q Had you previously reviewed your files to confirm
18 that you had not misspoken during your deposition about your
19 correspondence with NBC?

20 A I had previously reviewed my files on a couple of
21 occasions, not specifically to look for any one document but
22 to look for everything that may be relevant. To the best of
23 my recollection, at the time of my deposition I didn't believe
24 I had kept or preserved a copy of that fax to NBC.

25 Q Do you recall what time of day Mr. Howard's request

1 was made?

2 A I don't remember what time it was that he called me.

3 Q Do you recall how long it took you to find the two
4 facsimiles, that is, the facsimile that you sent to New York
5 and the facsimile you sent to California?

6 A Okay. There was only one facsimile.

7 Q One facsimile that you sent twice.

8 A Okay.

9 MR. HOWARD: Let the, let the record reflect that
10 there was only one -- that Ms. Schmeltzer treats that like she
11 hasn't been corrected, and she has been corrected. There was
12 only one facsimile. There's, there's --

13 MS. SCHMELTZER: One facsimile --

14 MR. HOWARD: -- never been two -- there, there are
15 two facsimiles in this proceeding, but there's only one that
16 went out.

17 JUDGE SIPPEL: Well, I, I didn't -- she can --

18 MS. SCHMELTZER: Let me, let me --

19 JUDGE SIPPEL: Please --

20 MS. SCHMELTZER: -- reframe the question.

21 JUDGE SIPPEL: -- clarify.

22 BY MS. SCHMELTZER:

23 Q All right. Did, did you send -- the facsimile that
24 you sent to NBC, it was a memo that you sent by fax to NBC, is
25 that correct?

1 A Yes.

2 Q And you sent it to NBC in New York and --

3 A Faxed it to NBC in New York.

4 Q And you faxed the same -- a copy of the same memo to
5 NBC in California?

6 A That's correct.

7 JUDGE SIPPEL: This is the tab A document?

8 MS. SCHMELTZER: Right.

9 JUDGE SIPPEL: Tab A to her testimony.

10 MS. SCHMELTZER: That's correct, with the exception
11 of the last page.

12 JUDGE SIPPEL: With -- correct.

13 BY MS. SCHMELTZER:

14 Q And you received back a document from Ms. Cole, is
15 that correct?

16 A Well, I received back a, you know, a cover fax page
17 with two pages, I think it was, of attachments.

18 Q And that's tab B?

19 A That's correct.

20 Q And in paragraph 12 when you say: "To my surprise,
21 I located two facsimiles..." -- those are the two facsimiles
22 that you're referring to, the one going out and the one coming
23 back?

24 A That's correct.

25 Q Now, you said you -- after Mr. Howard's request you

1 immediately began to look for the facsimiles -- the facsimile?

2 A Yeah, as near as I recall. I -- he, he called and I
3 then went through the files and began looking for it.

4 Q And how soon did you find the facsimile?

5 A I -- you know, I just don't recall.

6 Q Was it in the top drawer of your file cabinet, top
7 drawer of your --

8 MR. GREENEBAUM: I'm sorry. I thought you said top
9 floor.

10 MS. SCHMELTZER: -- file cabinet.

11 WITNESS: As near as I can recall, yes, it was in
12 the top drawer.

13 BY MS. SCHMELTZER:

14 Q And in what folder was it located -- or what file?

15 A You know, I don't, I don't specifically remember. I
16 was -- you know, I was flipping through quite a few files and
17 I just don't -- I remember that I found it like almost stuck
18 to or in between some other pieces of paper, but I just don't
19 remember if I found it in, you know, this file or that file.
20 There were a lot of files in there. So, I just don't remem-
21 ber.

22 Q And you have no idea between the time that Mr.
23 Howard called and the time that you found the facsimiles how
24 long it took you?

25 MR. ZAUNER: Asked and answered.

1 WITNESS: I don't.

2 MS. SCHMELTZER: Can you recall whether finding the
3 facsimiles took more than one day?

4 JUDGE SIPPEL: Well, it's just asking the same
5 question again that she already has asked and answered.

6 MS. SCHMELTZER: No, it's not. It's a different
7 question.

8 WITNESS: To the best of my recollection, it took
9 less than a day.

10 MS. SCHMELTZER: Do you recall whether it took less
11 than an hour?

12 WITNESS: I don't --

13 MR. HOWARD: Objection.

14 WITNESS: -- recall.

15 MR. HOWARD: That is asked and answered.

16 MS. SCHMELTZER: Now, Ms. Barr, I'd like to show you
17 a copy of a declaration that you executed on February 16,
18 1994. And I'd like to have this marked for identification as
19 Four Jacks Exhibit 34. This is a two-page document, Your
20 Honor.

21 JUDGE SIPPEL: The reporter will so mark that docu-
22 ment when you, when you hand it to her.

23 (Whereupon, the document referred to
24 as Four Jacks Exhibit No. 34 was
25 marked for identification.)

1 MS. SCHMELTZER: Your Honor, this was attached to a
2 First Supplement to Motion for Summary Decision that was filed
3 on February 17, 1994, and there were exhibits to it but I
4 haven't included all the exhibits --

5 JUDGE SIPPEL: All right. That --

6 MS. SCHMELTZER: -- because they're elsewhere in the
7 record.

8 JUDGE SIPPEL: That document will be marked as Four
9 Jacks Exhibit No. 34 for identification.

10 BY MS. SCHMELTZER:

11 Q Ms. Barr, would you take a moment to review that
12 Declaration, please? Is that your signature on page 2?

13 A Yes, it is.

14 Q And do you recall executing that Declaration on
15 February 16, 1994?

16 A I, I did. I signed it and I dated it.

17 Q And if you'll look at paragraph 2, it says, "In
18 October, 1993, Kenneth C. Howard, Jr., an attorney with Baker
19 & Hostetler, telephoned me and requested that I review my
20 files again to ensure the accuracy of my deposition statement
21 that I did not have the facsimile that I sent to NBC in August
22 1993 listing the issues about which WMAR-TV was seeking
23 records." Do you see that?

24 A Yes, I see it.

25 Q Now, when you executed that Declaration on February

1 16, 1994, did you know the date in October when Mr. Howard
2 telephoned you?

3 MR. ZAUNER: I'm going to objection. We're cross-
4 examining on a document that's not in evidence.

5 MS. SCHMELTZER: Your Honor, I would move that Four
6 Jacks Exhibit 34 be received in evidence.

7 MR. ZAUNER: I'd like to know the purpose for which
8 it's being offered?

9 MS. SCHMELTZER: Your Honor, this was a document
10 that was submitted with the Motion for Summary Decision. It
11 refers to a phone call that was made in October 1993. It does
12 not refer to the specific date of the phone call. I think I
13 have, I have the right to go into the difference between this
14 Declaration and her direct case testimony.

15 JUDGE SIPPEL: All right. Go ahead. Mr. Zauner?

16 MS. SCHMELTZER: Particularly since the date is a
17 particularly significant point.

18 JUDGE SIPPEL: All right. Well, we're going to get
19 -- this is cross-examination. I'm going to give Ms.
20 Schmeltzer a little leeway here. I'm overruling the objec-
21 tion. You can ask the questions and then move it into evi-
22 dence at an appropriate time.

23 BY MS. SCHMELTZER:

24 Q Ms. Barr, getting back to my question, do you see in
25 paragraph 2 you referred to Mr. Howard's phone call in October

1 1993?

2 A I see that.

3 Q And my question was on February 16, 1994, did you
4 know when Mr. Howard called you in October 1993?

5 A Do you mean -- by when do you mean what day?

6 Q What day.

7 A I believe I did, yes.

8 Q Is there some reason that that was not included in
9 that paragraph?

10 A I --

11 MR. HOWARD: Objection. There's -- what, what
12 reason is --

13 MR. GREENEBAUM: --

14 JUDGE SIPPEL: I'll sustain, I'll sustain the objec-
15 tion. Anything else with that exhibit?

16 MS. SCHMELTZER: Yes, Your Honor. Just a minute.
17 Now, Ms. Barr, do you see the sentence that Mr. -- we've been
18 referring to paragraph 2. And you stated on February 16,
19 1994, that Mr. Howard requested that you review your files
20 again to ensure the accuracy of your deposition statement. Do
21 you recall my asking you in your deposition on July 29, 1994,
22 what you meant by the term again?

23 MR. GREENEBAUM: What page?

24 MS. SCHMELTZER: On page --

25 MR. ZAUNER: I'm going to object. Now are we using

1 July 29, 1994, testimony to impeach something that's -- I'm
2 not sure what we're doing here.

3 MR. GREENEBAUM: I'm going to -- on the page --

4 MR. ZAUNER: What is the page and line again?

5 MS. SCHMELTZER: Deposition transcript 76, line 1.

6 MR. GREENEBAUM: 76?

7 MS. SCHMELTZER: Right.

8 MR. GREENEBAUM: Hold up a minute, please.

9 JUDGE SIPPEL: 76, line 1. Do you have that, Ms.
10 Barr?

11 WITNESS: Yes. Now, you said again what does the
12 term --

13 MR. GREENEBAUM: Wait a minute. There's been no
14 question today asked about the term again.

15 MS. SCHMELTZER: Let me ask the question. Ms.
16 Barr --

17 JUDGE SIPPEL: I -- go ahead.

18 MS. SCHMELTZER: -- what did you mean by the phrase,
19 "...Mr. Howard requested that I review my files again to
20 ensure the accuracy of my deposition statement..."?

21 JUDGE SIPPEL: Where, where do you see that?

22 MS. SCHMELTZER: It's, it's in her Declaration of
23 February 16, 1994.

24 JUDGE SIPPEL: Well, wait a minute now. Wait just a
25 minute. I, I, I -- and I just am -- I, I don't see the nexus

1 between the two.

2 MR. GREENEBAUM: It doesn't have anything --

3 JUDGE SIPPEL: I just don't see the connection.

4 MR. GREENEBAUM: -- to do with the direct testimony
5 here today, I don't believe. That's my point. We're just
6 going fishing. It's a good day for it, but -- got the right
7 venue.

8 MR. ZAUNER: I've got work to do back in my office.
9 I'm sure you do too, Your Honor.

10 JUDGE SIPPEL: Well, I, I -- no, I don't want to
11 denigrate what -- the efforts of Ms. Schmeltzer. She's --
12 this is a very difficult subject to cross-examination. But I,
13 I guess this is just taking it too far afield. I, I don't see
14 where this -- Mr. Greenebaum is correct. It just does not tie
15 in directly or even -- well, it doesn't tie in directly with
16 her testimony here today. And to question this witness on
17 what she executed back in February 1994 in connection with a
18 Motion for Summary Decision where the terminology is going to
19 be used in a context that's different from terminology that
20 might be used today in a, in a, in a sworn direct testimony
21 where she's on the stand -- and it also is going to -- it, it,
22 it, it's language which is being crafted, as the rules provide
23 for that kind of craftsmanship, as distinguished from what's
24 being stated in a deposition. There is just no nexus that's
25 going to move this proceeding along to consider this approach.

1 So, I'm going to instruct the -- Ms. Schmeltzer to move on to
2 something else.

3 MS. SCHMELTZER: Your Honor, I, I would nevertheless
4 move the receipt of Four Jacks Exhibit 34. And the reason for
5 that, Your Honor, is that I, I think it is important that in
6 -- on that day, February 16, 1994, which was closer in time
7 than today -- or than September -- than the date of her direct
8 case testimony, she -- her testimony was that Mr. Howard had
9 called her in October 1993. And it was only subsequent to
10 that that she testified that Mr. Howard called her on October
11 26, 1993.

12 JUDGE SIPPEL: Well, I'm going to reject the testi-
13 mony -- the -- I'm going to, I'm going to reject the, the
14 document as evidence of that -- to draw that conclusion. I'm,
15 I'm not -- it's -- as I say, I think it's -- in my judgment,
16 you're mixing apples with oranges. You're taking a declara-
17 tion that was used for an entirely different purpose and an
18 entirely different time and it's, it's going to -- where's my,
19 my favorite rule of evidence? 403. Even if it's relevant, it
20 confuses and/or it wastes time. So, on that ground -- on that
21 basis I'm going to reject it. But you have your record made.

22 (Whereupon, the document marked for
23 identification as Four Jacks Exhibit
24 No. 34 was rejected.)

25 MS. SCHMELTZER: Okay. Thank you, Your Honor. Ms.

1 Barr, I have a few more questions on the NBC correspondence.
2 Excuse me. When you were putting together the -- when you
3 were gathering the documents from NBC and putting together
4 exhibits on this matter, was it your practice to send copies
5 of the documents to counsel in Washington?

6 MR. HOWARD: Objection to the question that she was
7 gathering documents from NBC to prepare exhibits. There's --

8 JUDGE SIPPEL: I'm --

9 MR. HOWARD: --

10 JUDGE SIPPEL: I'm going to sustain the objection.
11 She testified in the beginning exactly what she did with
12 respect to documents vis-à-vis counsel. That's in the record
13 and I'm not going to permit going back to cover that subject
14 again.

15 BY MS. SCHMELTZER:

16 Q Okay. And did your practices that you described
17 earlier also include the NBC documents, Ms. Barr?

18 A I'm, I'm not following that question. I'm sorry.
19 Could you ask that again?

20 JUDGE SIPPEL: You can ask her -- that's, that's,
21 that's asking too much of the witness. You can ask her, if
22 you haven't already, you can ask her what she did with the NBC
23 documents over and above what she has already testified to,
24 but not in the context of did she do what she was instructed
25 to do literally by the attorneys back early on. She sent them

1 up. We know that.

2 MR. HOWARD: And, Your Honor, may I ask for
3 clarification, since it's a very important point, just what
4 NB-- what does Ms. Schmeltzer mean by NBC documents?

5 MS. SCHMELTZER: All the documents she obtained from
6 NBC.

7 MR. HOWARD: Well, does that include the facsimile
8 correspondence --

9 MS. SCHMELTZER: Well, that would have been --

10 MR. HOWARD: -- that came from NBC --

11 MS. SCHMELTZER: -- that would have been --

12 MR. HOWARD: -- that was not a document used in
13 preparation?

14 MS. SCHMELTZER: That was going to be a separate
15 question, Mr. Howard.

16 JUDGE SIPPEL: Yeah. Let, let -- easy. Don't
17 anticipate. I, I understand what your question is. Do you
18 understand what her question is in terms of the documents, the
19 NBC documents?

20 WITNESS: The -- I'm not sure I do.

21 MS. SCHMELTZER: Let, let me --

22 JUDGE SIPPEL: All right. Let --

23 MS. SCHMELTZER: -- let me -- can I ask --

24 JUDGE SIPPEL: Go ahead. Start again.

25 MS. SCHMELTZER: -- her two -- just -- I have --

1 JUDGE SIPPEL: Start again.

2 MS. SCHMELTZER: -- one or two questions on this
3 point.

4 BY MS. SCHMELTZER:

5 Q When you sent documents to your counsel in
6 response to the Motion for Production of Documents for
7 production to Four Jacks in this proceeding, did you send your
8 counsel the NBC documents -- or copies thereof?

9 A Okay. First of all, I requested the documents
10 from NBC, as I recall, in the summer of 1992, which I believe
11 was before Motion for Production of Documents even happened, I
12 think.

13 JUDGE SIPPEL: Well, what, what date are you talking
14 about? This is June of '93?

15 MS. SCHMELTZER: Yes.

16 JUDGE SIPPEL: This is June of '93.

17 WITNESS: So, now we're jumping ahead, oh, quite a
18 ways.

19 JUDGE SIPPEL: Well --

20 WITNESS: Because I asked NBC for the documents in
21 August of 1992. That's when I asked them for the documents.

22 JUDGE SIPPEL: All right. But Ms., Ms. Schmeltzer's
23 question to you is -- I'm going to paraphrase it a little bit
24 -- but in June of 1993, all right, when you were furnished by
25 your counsel a copy of the Four Jacks document request, did

1 | you send to your counsel the NBC documents, as we generally
2 | understand them to be today?

3 | WITNESS: Okay. I understand the question now. I
4 | don't recall whether I sent the NBC documents prior to June of
5 | 1993 or whether I held on to them. See, I received them very
6 | early on in the process. I received them in, I think it was,
7 | the end of August of 1992. And all I did with them was make a
8 | copy and send them to counsel. But what I cannot remember is
9 | did I make that copy immediately, you know, and just send them
10 | up or did I hold on to them and send them at the time that
11 | they requested it. I just don't remember.

12 | JUDGE SIPPEL: And the time that they requested it
13 | would be -- what is that time that you're referring to?

14 | WITNESS: I asked -- I called NBC and sent them this
15 | fax in August -- early August of 1992 and asked them to send
16 | me just, you know, computer printouts of the appropriate
17 | things that had aired that related to our programming in
18 | Baltimore, and they did that. And they sent it fairly expedi-
19 | tiously. And then I received it. And, you know, what I
20 | remember is that it was a huge pile of paper and it sat in my
21 | office for some period of time. I copied all of it -- or I
22 | had it all copied, and it went to counsel. But I just don't
23 | remember if it went, you know, in September or October,
24 | November, or if it just sat there until, you know, May or June
25 | of the following year.

1 JUDGE SIPPEL: All right. Did you send it up at
2 some time -- did you send the NBC documents to Scripps Howard
3 counsel at or before the June 1993 request for documents that
4 was given to you by counsel?

5 WITNESS: All right. Now, what I'm, what I'm --

6 JUDGE SIPPEL: Do you understand the question?

7 WITNESS: I understand the question. What I'm
8 saying is I may well have. I just don't remember whether I
9 sent it to them at that time or much earlier. I had -- they
10 were in my possession well before that June 1993 time period.

11 MS. SCHMELTZER: Now, did you send the correspon-
12 dence -- and by that I mean your memo to NBC and the response
13 -- did you send those to counsel in 1992 or 1993?

14 WITNESS: Not that I recall.

15 MS. SCHMELTZER: Did -- was the memo and the re-
16 sponse put into --

17 JUDGE SIPPEL: That's the tab A -- this is the tab A
18 documents to her --

19 MS. SCHMELTZER: A -- tab A, right.

20 JUDGE SIPPEL: -- exhibit?

21 BY MS. SCHMELTZER:

22 Q Were they put into a file at WMAR-TV?

23 A Today I now know that they were, because, I mean,
24 I knew that as of October 26, 1993, when I found them. Prior
25 to that time I didn't even believe I had kept them.

1 Q So, they were put into the top drawer in the
2 cabinet that had all of the documents relating to this case,
3 is that right?

4 A They were in a file stuck in between some pieces
5 of paper in with all the other papers that were in that file,
6 you know, in the files.

7 MR. GREENEBAUM: I think we're talking about docu-
8 ments in her custody, possession, or control?

9 JUDGE SIPPEL: Yes. You understand?

10 BY MS. SCHMELTZER:

11 Q They -- but my question was were they put in the
12 top drawer of a two-drawer file cabinet that had all the
13 documents related to this case?

14 A As best as I now know, yes, they were.

15 Q And what other papers were they placed with?

16 A They were -- all the papers that related to this
17 case were in the top drawer.

18 Q No. But what -- you said that the facsimiles
19 were in between two other pieces of paper. What papers were
20 the facsimiles with?

21 MR. HOWARD: Asked and -- objection. Asked and
22 answered.

23 MS. SCHMELTZER: No, it hasn't been.

24 JUDGE SIPPEL: Well, I'm going to permit this.

25 WITNESS: I --

1 JUDGE SIPPEL: You can answer it.

2 WITNESS: I just don't remember.

3 BY MS. SCHMELTZER:

4 Q Am I correct that you don't recall whether anyone
5 from Baker & Hostetler came to WMAR-TV to look for the fac-
6 similes, that is, the correspondence to and from NBC, prior to
7 October 26, 1993?

8 A I have no recollection that anyone came to look
9 for those specific facsimiles.

10 Q Do you recall whether attorneys from Baker &
11 Hostetler came to WMAR-TV between the time of your deposition
12 and October 26, 1993?

13 JUDGE SIPPEL: The first deposition.

14 BY MS. SCHMELTZER:

15 Q The first deposition. October -- I'm sorry.
16 Between the time of your first deposition, July 16, 1993, and
17 October 26, 1993.

18 A They may well have. We were preparing for
19 hearing. I just don't remember the exact dates that they were
20 there.

21 Q Do you know whether there were any searches for
22 documents during any of the visits that they had?

23 JUDGE SIPPEL: Well, she says --

24 MR. HOWARD: Objection.

25 JUDGE SIPPEL: -- she doesn't remember. She assumes

1 that there were.

2 WITNESS: Excuse me.

3 JUDGE SIPPEL: Yes?

4 WITNESS: Excuse me, Your Honor. I, I don't mean
5 that I assume there were searches. I assume they came to
6 WMAR-TV --

7 JUDGE SIPPEL: That's what I understand.

8 WITNESS: -- to meet, to meet with us.

9 JUDGE SIPPEL: That's what I understood you to say.

10 WITNESS: Yeah. Right. But I don't know that there
11 were any searches. I just don't remember. The, the search --
12 the only search I remember is the one where Dave Roberts came,
13 and that was earlier on in this process. That was in June of
14 1993.

15 MS. SCHMELTZER: Okay. Just to recap, Ms. Barr, on
16 July 16, 1993, you didn't know you had the -- you testified
17 you didn't know you had the NBC correspondence. Is that
18 correct?

19 MR. GREENEBAUM: Your Honor, I'm going to -- do we
20 have to recap? It's --

21 JUDGE SIPPEL: Yeah. This is --

22 MR. GREENEBAUM: -- in the record. I don't think
23 that --

24 JUDGE SIPPEL: That, that's correct. This is not a
25 board of directors meeting. We don't do recaps. I think you,